

State Reimbursement of Extraordinary Criminal Justice Costs

Introduction. Aggravated murder cases are charged under RCW Chapter 10.95, which establishes that a person is guilty of aggravated murder if he or she commits first degree murder and one or more specific aggravating circumstances exist. A defendant convicted of aggravated murder is sentenced to life imprisonment without possibility of release or parole, or, if the prosecutor serves a death penalty notice and the jury finds no sufficiently mitigating circumstances, sentenced to death.

The 1999 Washington State Legislature, in recognition of the high expense of aggravated murder cases and shortage of sufficient criminal justice funds to pursue them in many county budgets, passed [HB 1599](#), which creates a process for petitioning for reimbursement of county costs incurred in aggravated murder cases. [HB 1599](#) directs the Office of Public Defense (OPD) to draft a county petition process and a method for prioritizing petitions in consultation with the Washington Association of Prosecuting Attorneys (WAPA) and the Washington Association of Sheriffs and Police Chiefs (WASPC), and, on a yearly basis, to submit a list of prioritized petitions to the Legislature.

Development of Procedures Required by [HB 1599](#). During FY 2000, the Office of Public Defense interviewed court and budget officials in several counties, consulted with the Office of Financial Management regarding Okanogan County's reimbursement process and participated in Okanogan county reimbursement meetings, drafted and distributed a survey on aggravated murder costs to all counties, drafted a 1999 case petition based on the survey results and distributed it to all counties; met with attorneys, legislators, and court administrators regarding the petition results; consulted with the Washington Association of Prosecuting Attorneys and the Washington Association of Sheriffs and Police Chiefs regarding the petition forms and results and setting priorities and an auditing process; worked with counties submitting petitions to advise them as to the documents and information required for their petitions; and met with WAPA and WASPC regarding the prioritized list of counties.

Form of Petition. [The 1999 petition form is located at Appendix 3.](#) The form asks questions about the county budget and methods for predicting the impact of aggravated murder cases, and includes a cost chart for filling in detailed cost information about each case claimed. Eight counties, Franklin, Cowlitz, King, Clark, Kitsap, Pierce, Thurston, and Yakima submitted reimbursement petitions.

Originally, many of the petitions submitted omitted reimbursement claims for quite a few of the available categories. Expert witnesses and contracted defense counsel claims were usually filled in, but prosecution, sheriffs, jail, and court costs were often left blank. Obviously, contracted costs claimed on invoices are relatively easy to ascertain. After consulting with WAPA, OPD advised those counties that more categories had to be filled out for the petition to be considered

Auditing the Veracity of the Petitions. [HB 1599](#) requires the development of procedures to audit the veracity of the petitions. It was decided that for 1999, counties would be required to submit copies of invoices for claimed expenses if they were available. For claims of time spent by salaried employees on cases, counties were asked to make specific dollar estimates based on the amount of time the employee spent on the case. Claims that merely listed a standard salary amount or did not name a specific dollar amount were rejected. Submitted invoices were scrutinized to ensure that they matched the claimed amounts.

It was decided that petitions in future years should be supported by time records showing the actual amount of time spent by salaried employees, in addition to invoices for contracted defense or expert services or other claimed costs.

Prioritizing the Petitions. The 1999 petitions were prioritized based on the factors listed in the statute: disproportionate fiscal impact relative to the county budget, efficient use of resources, and whether the costs are extraordinary and could not be reasonably accommodated and anticipated in the normal budget process. [The prioritized list is located at Appendix 2.](#)

Most aggravated murder cases take more than one year to complete, but [HB 1599](#) requires that petitions be prioritized on a yearly basis. Therefore, it was decided that aggravated murder cases lasting more than one year generally should be considered during the year of adjudication, since the majority of costs are usually incurred during that year. Counties would claim for all of the case's expenses to date by filing an aggravated murder petition at the end of the year of adjudication.

Disproportionate Fiscal Impact Relative to the County Budget. This factor addresses the difficulty smaller counties face in paying for one or more aggravated murder cases on top of the usually high cost of ordinary criminal justice within limited budgets, as well as the impact of large, multi-defendant cases, an unusually high number of cases, or otherwise complex cases occurring in a larger county.

Calculating a predictable measure of the disproportional fiscal impact on the county budget will help counties to predict whether specific aggravated murder cases can meet this factor. By taking a specific percentage of the county budget and applying it to all applying counties, each county's impact proportional to its own budget can be measured. One half percent of the current expense budget for each county was selected as a 'threshold' amount to meet this factor. For example, amounts for the eight counties submitting petitions in 1999 are shown below:

County	Current Expense Budget	1/2% of Current Expense Budget	Aggravated Murder Amount Claimed for 1999 ^[1]
Clark	\$87,133,067	\$435,665	\$50,364
Franklin	\$12,827,399	\$64,137	\$79,429
King	\$437,100,790	\$2,185,504	\$1,564,597
Cowlitz	\$28,811,741	\$144,059	\$346,882
Kitsap	\$55,231,456	\$276,157	\$185,569
Pierce	\$172,176,520	\$860,883	\$328,840
Thurston	\$48,684,509	\$243,423	\$304,732
Yakima	\$47,339,427	\$236,697	\$79,848

^[1] Amounts in the fourth column appear as they were claimed by the counties and prior to auditing.

If a county's claim meets 1/2% of the its current expense budget level, it is to be ranked high for this factor

Efficient Use of Resources. Aggravated murder costs vary widely from county to county and case to case. High prosecution and defense costs are commonly incurred. Since late 1997, courts have been required to appoint co-counsel for the defendant in death penalty cases.

Counties' efficient use of resources can be examined by looking at the amounts of claimed costs. More information about the length of court proceedings and the complexity of the cases should be ascertained

in future petitions in order to better evaluate the county's efficient use of resources, since these elements can determine the cost of the cases.

For future cases, counties should be encouraged to submit proposed defense fee arrangements to OPD for input before contracts are signed. OPD can give the county information about market rates and contract methods based on its statewide experience, helping counties avoid paying above-market rates.

It is recommended that the Legislature consider using a percentage method of reimbursement for claimed aggravated murder cases in order to encourage efficient use of resources.

Extraordinary Nature of Costs. This factor examines whether the county prosecutes aggravated murder cases on a regular basis. Counties which have never, or only rarely, charged a defendant with aggravated murder have satisfied this factor.

Another extraordinary impact of costs can occur when counties of any size experience large, heinous, or particularly complex cases which cannot have been predicted. This often results in costs which are high throughout many or all of the cost categories; for example, in large multiple-defendant cases, prosecution, defense, and incarceration costs, among others, are likely to be high. They also may be high in complex cases such as those involving unusual DNA issues which involve many hours of defense and prosecution expert witnesses.

Other Factors Impacting Counties' Ability to Pay for Aggravated Murder Cases. Counties should be able to list other factors that impact their budget disproportionately to the budgets of other counties. For example, if their aggravated murder costs include substantial interpreter costs due to a significantly high number of non-English speaking defendants in contrast to most other Washington counties, their assertion that interpreter costs have a disproportionate impact should be considered. If a county has an unusually high number of offenders in its population, resulting in a proportionally high criminal justice budget already taking up a substantial majority of the county's current expense budget, the county should be able to request consideration of that fact.

Future Petitions. An updated petition form will be developed by OPD, in consultation with WAPA and WASPC, and distributed to all counties during the first quarter of 2000. The petition will include comprehensive instructions regarding making claims and supporting them with records and invoices. OPD will continue to be available to answer counties' questions regarding extraordinary justice account petitions and process.

1999 Petition Results. OPD, WAPA, and WASPC concluded that only one county, Cowlitz, met all the factors outlined in HB 1599 in its petition. The claims of two counties, Thurston and Franklin, appear to meet the [HB 1599](#) factors, but their aggravated murder cases are still being adjudicated. They are encouraged to apply for costs incurred during the entire case once the cases have been adjudicated.

In their 1999 petitions, none of the other counties met the first factor, and the cases they claimed did not appear to be unusually large and complex. However, claimed cases begun in 1999 may mature into more high impact cases when they are adjudicated. With accurate record keeping for prosecutor's time, incarceration costs, and sheriff's time, and so forth for purposes of making an accurate claim in future years, these counties may be able to claim much higher actual costs incurred during the adjudication of these or other aggravated murder cases in the future.

H-0589.2

HOUSE BILL 1599

State of Washington 56th Legislature 1999 Regular Session

By Representatives McMorris, Doumit, Clements, Constantine, Sheahan, Grant, G. Chandler, Linville, Rockefeller, D. Schmidt, Kessler and Schoesler

Read first time 01/29/1999. Referred to Committee on Local Government. AN ACT Relating to court funding; and adding new sections to chapter 43.330 RCW.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

{+ NEW SECTION. +} Sec. 1. A new section is added to chapter 43.330 RCW to read as follows:

The extraordinary criminal justice assistance account is created in the state treasury. Appropriations may be made from the general fund or the public safety and education account into this account. Moneys in the account may be spent only after appropriation and as authorized by the legislature. Expenditures from the account may be used only to reimburse the extraordinary costs associated with the prosecution, indigent defense, jury impanelment, expert witnesses, interpreters, incarceration, and other adjudication costs of aggravated murder cases. Only the director of community, trade, and economic development or the director's designee may authorize expenditures from the account.

{+ NEW SECTION. +} Sec. 2. A new section is added to chapter 43.330 RCW to read as follows:

Eligible counties may submit claims to the department of community, trade, and economic development for reimbursement from the extraordinary criminal justice assistance account. Counties are eligible to submit claims if their total costs for investigating and

adjudicating an aggravated murder case or cases are equal to twelve percent of the most recent county law and justice budget adopted by the county's legislative authority. For purposes of this section, a county's law and justice budget is equal to the combined total of the county's yearly appropriations for the sheriff's office, prosecutor's office, indigent defense providers, jail, and superior court.

(1) The department of community, trade, and economic development shall develop procedures for processing the claims, for auditing the veracity of the claims, and for prioritizing the claims. Prioritization of the claims shall be based on, but not limited to, such factors as disproportionate fiscal impact relative to the county budget, efficient use of resources, and whether the costs are extraordinary and could not be reasonably accommodated and anticipated in the normal budget process.

(2) Before January 1st of each year, the department shall develop and submit to the appropriate fiscal committees of the senate and house of representatives a prioritized list of submitted claims that are recommended for funding by the legislature from the extraordinary criminal justice assistance account. The list shall include a summary of each claim and the nature of the costs incurred.

(3) The department shall not financially obligate funds from the extraordinary criminal justice assistance account before the legislature has appropriated funds for a specific list of claims. The legislature may remove projects from the list recommended by the department. The legislature shall not change the order of the priorities recommended for funding by the department.

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Prioritized List

(Amended)

High-Priority Petitions:

Petitions recommended for reimbursement this year:

Cowlitz County - <i>State v. Kondro</i>	\$346,882
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High-priority petitions that are recommended for funding after they are adjudicated in the future:

Franklin County	(to date)	\$79,429
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Thurston County	(to date)	\$824,577
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Mid-range priority petition:

Pierce County	1,347,501
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Lower priority petitions:

Clark County	\$50,364
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King County	\$1,564,597
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Kitsap County	\$185,569
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Yakima County	\$79,848
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Extraordinary Criminal Justice Costs
County Petition/Application for Reimbursement of Costs

County: _____ Population _____

1. In 1999_____ county paid for one or more high-cost aggravated murder case(s) which severely impacted the county budget in 1999, for which the county seeks reimbursement from state funds.
2. The 1999 total county criminal justice budget was: _____
3. In order to pay for aggravated murder cases, the county____did____did not use funds from other budget categories, namely (if applicable): _____
4. The county's total 1999 budget was _____
5. The county budget's emergency fund was _____
Restrictions on use of the emergency fund, if any, are: _____
6. Defense representation in 1999 aggravated murder case(s) was provided by:
____ a. the county contract public defender
____ b. private counsel hired specifically to represent the defendant in the murder case,
who was selected by the following method:

____ c. other (describe): _____
7. Names of the defense attorneys who have been appointed to represent defendants in aggravated murder cases in 1999 were: _____

8. The payment terms agreed to by defense counsel were: _____

A copy of the defense attorney contract is attached (if applicable.)
9. In 1999 aggravated murder cases there were____ were not____ limits on the amount the:
a. prosecution could spend, specifically (if applicable): _____

b. defense could spend, specifically (if applicable): _____

10. The county predicted criminal justice costs for the 1999 budget by using the following process:

11. Attached is a table indicating the costs of each of the claimed 1999 aggravated murder case(s) for prosecution, defense, investigation, sheriff/police, jury, expert witnesses, interpreters, jail, and court and other costs, which is incorporated by reference herein.
12. Attached are copies of all available invoices submitted to the county in the claimed 1999 aggravated murder case(s) for payment of expenses, which are incorporated by reference herein as true and accurate records.

I certify that the above statements on this Petition for Reimbursement for Extraordinary Justice Costs are true to the best of my information and belief, under penalty of perjury under the laws of the State of Washington.

Signature _____

Date _____

Title _____

Place _____

Aggravated Murder Case Table

Please include all costs for 1999 aggravated murder cases

	Case Name	Year	Defense Attorney	Prosecution	Investigation - Defense [1]	Investigation - Prosecution	Sheriff/Police	Jury	Expert Witness- Defense	Expert Witness- Prosecution	Interpreter	Jail	Court	Other [2]
1														
2														
3														
4														
5														
6														
7														
8														

[1] Investigation also includes discovery costs such as depositions, travel, copying, etc.

[2] Please specify type of cost and amount